

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Partition Suit No.-97 of 2012, Registration No.-1792/14

Smt. Amola Devi vs. Smt. Janki Devi & Others

29-07-2022

Case is called out and record is produced before me. Wakaltan hazari is filed on behalf of plaintiff while defendants are absent. Perused the case record. On perusal of the case record, it appears to the Court that today this suit is fixed for order on petition dated-15.06.2022 filed on behalf of the defendant no.-6. In this petition, prayer of the petitioner is that your honour has been pleased to recast the issue no.-8 which goes to show either the plaintiff is entitled to retain "Gharai land herself by virtue of section 4 of Partition Act and also by virtue of sec.-44 of T.P. Act, but most humbly it is submitted that such issue has not been settled by this Court and as such this defendant didn't adduce evidence on that point. It is further submitted that defendant no.-6 is himself a co-sharer of Gharari land appertaining to C.S.P. no.-343. It is further submitted that there was a proceedings u/s-188 of the IPC for the said land in question before Vijay Kumar Sinha S.D.M. Benipur and Surendra Jha defendant no.-6 in which the land in question was found in possession of defendant no.-6 vide G.O. Case No.-12/02 much before this dispute between the parties. That certified copy of that case has been filed which may kindly be marked as exhibit. Hence, it is prayed that your honour would graciously be pleased to mark the said document as public document to meet the ends of justice.

A rejoinder petition is filed on behalf of behalf the plaintiff on petition dated-15.06.2021. In this rejoinder, it has been submitted that petition dated-15.06.2022 filed by the defendant no.-6 is not maintainable. He has got no right or cause of action to file such petition under the fact and circumstances of the case. It is further submitted that the petition dated-15.06.2022 is barred by the law of limitation and also barred by the principles of waiver, estoppel and acquiescence. The petition is beyond the scope and nature of the suit. The plaintiff has sought prayer for pre-emption u/s-44 of the T.P. Act. The defendant no.-6 never claimed prayer for pre-emption in W.S., nor he filed counter claim.

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continued.....

So the petition dated-15.06.2022 and the document sought to be exhibited is irrelevant for the purpose of this suit. The document sought to be marked by defendant will unnecessary enlarge the scope of the suit as the defendant no.-6 has the knowledge of the pleadings of the plaintiff from before. The petition dated-15.06.2022 filed on behalf of the defendant no.-6 has got no merit and the same is fit to be rejected. It is therefore, prayed that your honour would graciously be pleased to order to reject the petition dated-15.06.2022 filed on behalf of the defendant no.-6 in the interest of justice.

Heard both the learned counsels of plaintiff and defendant and perused the case record. On hearing and perusal of the case record, it appears to the Court that this suit for partition has been brought by the plaintiff. It further appears that issues have been recasted on 01.04.2022 on the prayer of the parties when it was pending for argument. Argument of defendant no.-6 had been heard at length, then the instant petition has been filed on behalf of the defendant no.-6 to mark the document exhibited on his behalf.

Within the meaning of Order-VIII,Rule-1A,it is duty of the defendant to produce the all documents upon which his defence is bases in the Court when Written Statement is presented. A document which ought to be produced in Court by the defendant under this rule,but is not produced shall not be received in evidence on his behalf at the hearing of the suit without the leave of the Court.

The Court is of opinion that issue can be recasted as any time even when writing the judgment and it is not open for either party to led evidence thereafter. Issues are recasted according to the pleadings of the parties and both parties to this suit are well acquainted with the pleadings of each other. He didn't file such documents prior and filed the same without permission of the Court, so it will not proper to accord permission to either party to either adduce evidence or produce any documents at the stage of argument.

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continued.....

Considering the fact and circumstances as discussed above, the Court is not inclined with the contention of learned counsel of the defendant no.-6. The Court is of opinion that petition dated-15.06.2022 filed on behalf of the defendant no.-6 is devoid of merit and the same is not maintainable and is fit to be dismissed. Thus, petition dated-15.06.2022 is disposed of as accordingly. Since, this is ten years old case and as per the direction of the Hon'ble High Court of Judicature at Patna,disposal of the such an old case is highly essential, so learned counsel of the defendant no.-6 is directed to come prepared for argument on next date.

Fixing on ...5-8-22..... for argument of defendant no.-6.

Dictated
Sub Judge-II
29, 07.22